IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20039 of 2005
With
SPECIAL CIVIL APPLICATION No. 20438 of 2005
To
SPECIAL CIVIL APPLICATION No. 20450 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAFATLAL BABALDAS MODI & 13 - Petitioner(s)

Versus

STATE OF GUJARAT THR' SECRETARY & 5 - Respondent(s)

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Appearance :
MR JS YADAV for Petitioner(s) : 1 - 14.
MR DA DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
MR.ALKESH N SHAH for Respondent(s) : 4 - 6.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/10/2005

COMMON ORAL JUDGMENT

1. Rule. Shri Dipen Desai, learned AGP waives service of rule on behalf of the respondent Nos.1 and

2. Shri Alkesh N. Shah, learned advocate waives service of rule on behalf of the respondent Nos.4 to 6. With the consent of the learned advocates for the parties, all the matters of this group are heard finally today.

2. As the common questions of law and facts arise in this group of petitions, they are being disposed of by this common judgment and order.

3. It is the case on behalf of the petitioners that they are shop owners having existing premises of shops situated at Mehsana on the land bearing Survey No.1990 / 40 paiki. The petitioners are in occupation and possession of the shops bearing City Survey Nos.1251 to 1258 and 1260 to 1269. The persons in occupation and possession of the property / shops bearing City Survey No.1251 to 1258 applied for development permission for putting up new construction by demolishing the existing construction and the Town Planning Committee of Mehsana Area Development Authority vide Resolution No.19(9) dated

15.7.2004 granted development permission No.181 for putting up construction of eight shops on ground floor and eight shops on first floor and eight shops on second floor. Similarly, the persons in occupation and possession of the property / shops on City Survey No.1260 to 1269 also applied for development permission for putting up construction of new shops in place of existing shops and the Town Planning Committee of Mehsana Area Development Authority vide Resolution No.38(24) dated 18.1.2005 and granted development permission No.357 dated 4.2.1005 granted permission to put up construction of ten shops on ground floor. The aforesaid development permission came to be challenged by the respondent Nos.4 to 6 before the Collector, Mehsana under Section-6(b) of the Gujarat Town Planning Act and the Collector, Mehsana by its order dated 7.7.2005 dismissed both the appeals i.e. Appeals Nos.1 and 2 of 2005. However, while deciding the said appeals and considering the aforesaid two development permissions also directed to remove illegal and unauthorised construction which was put up in the land bearing

F.P.No.3 of Survey No.1990 / 40 T.P.Scheme No.1 i.e. property known as Prashant Cinema and the shops constructed on the same and also directed even the petitioners to remove the construction which was found in the margin land. Being aggrieved and dissatisfied with the common order passed by the Collector, Mehsana dated 7.7.2005 passed in aforesaid two Appeals No.1 & 2, the respondent Nos.4 to 6 preferred the Appeal / Revision Application No.9 of 2005 before the State Government i.e. Officer on Special Duty and Deputy Secretary, Urban Development and Urban Housing Department vide its impugned judgment and order dated 17.9.2005 partly allowed the said appeal and quashed and set aside the order passed by the Collector, Mehsana dated 7.7.2005 passed in Appeals Nos.1 & 2 of 2005 and also permanently suspended the aforesaid two development permissions i.e. Development Permission No.181 and 357 and directed the parties to restore the position which was prevailing prior to granting the aforesaid two development permissions and further directed the appropriate authority of Mehsana Area Development

Authority to inquire into the title and ownership of the land in question and to take a decision afresh on production of fresh plans for the purpose of putting up construction of shops in accordance with law. It also appears that as it was contention on behalf of the respondent Nos.4 to 6 that in the application for development permission as well as and/ or on the plans submitted while obtaining the development permission, their forged signatures are committed and therefore, the Deputy Secretary also directed to consider the same and take final decision. Being aggrieved by and dissatisfied with the order passed by the Deputy Secretary, Urban Development and Urban Housing Department, State Government dated 17.9.2005 passed in Appeal No.9 of 2005, the petitioners – shop owners who obtained the development permissions Nos.181 and 357, have preferred the present special civil applications under Articles 226 and 227 of the Constitution of India.

4. Shri J.S.Yadav, learned advocate appearing on behalf of the respective petitioners while assailing

the order passed by the State Government has submitted that the Deputy Secretary has materially erred in directing to restore the position which was prevailing prior to grant of development permission though he has no jurisdiction to do so as contemplated under Section-6(b)(4) of the Gujarat Town Planning Act. It is also further submitted that the powers of the appellate authority is limited to modify and / or rescind and / or revise the order and as such, has no authority to pass any order of removal of construction and restoring the position as prevailing prior to construction in question. He has also submitted that as such, so far as Unit-II is concerned, the construction on ground floor and first floor and even on second floor is already put to use and so far as Unit-I is concerned, according to him, the construction is already completed and shops are put to use for their respective business activities. It is also further submitted that as such, the original owner – respondent – Shri Dashrahlal Kantilal Shah himself had signed the application for development permission and even on the plans while

submitting the same for development permission as he is also owner of three shops in question and therefore, his contention that the development permission has been obtained behind his back, is not correct. It is also further submitted by him that as such, the Deputy Secretary has passed the impugned order on the ground which was not put to the notice of the petitioners i.e. with regard to sub-plotting of original land bearing Survey No.1990 / 40 into two sub plots i.e. Revenue Survey No.1990 / 40 – Sub-plot -A and sub-plot-B and therefore, it is requested to allow the present special civil applications as to the extent that the impugned order is in breach of principle of natural justice. It is also further submitted by him that whatever construction is in the margin land , they have no objection if it is ordered to be demolished if the same is found to be illegal. He has also further submitted that so far as the development permissions in question are concerned, the same are granted by the appropriate authority under the Gujarat Town Planning Act considering the provisions of the Act and Rules and Regulations and

after holding necessary inquiry and therefore, the Deputy Secretary has materially erred in quashing and setting aside the same. It is also further submitted that the respective petitioners have purchased the shops from the original land owner i.e. the respondent No.4 herein and they have started to put up construction and / or have put up construction as per the development permission. It is also further submitted that theory of sub plotting was neither before the Collector, nor discussed before the Deputy Secretary and the same has been considered and dealt with and the impugned development permissions are set aside on that ground and therefore, the same is in breach of principle of natural justice.

5. Shri Dipen Desai, learned AGP appearing on behalf of the respondent – State Authorities as Shri Alkesh N. Shah, learned advocate appearing for the private respondents have jointly submitted that originally pursuant to the order passed by the Collector, Mehsana dated 22.6.1982 while granting permission to put up construction as per the lay out

plan sanctioned, there was sub plotting of original land bearing Revenue Survey No.1990 / 40 paiki into two sub plots viz. Sub-plot-A and another sub-plot -B. The area of the original plot bearing revenue city survey no.1990/40 paiki was 4498.68 sq.mts and on sub-plotting the same, sub-plot-B was admeasuring 3413.52 sq.mts and sub-plot-A was admeasuring 1086.48 sq.mtrs. It is also further submitted that as per plan sanctioned by the Collector. Mehsana vide order dated 22.6.1982, out of 3413 sq.mtrs of plot, sub-plot-B, permission was granted to put up construction on area admeasuring 815.69 sq.mts for cinema hall and 2596.33 sq.mtrs was required to be kept open and the same was to be used for parking for the visitors of the cinema hall. Similarly, so far as sub-plot-A is concerned, permission was granted to put up construction upon 434.40 sq.mtrs of land and 652.08 sq.mtrs was required to be kept as open land. It is submitted that inspite of the above order passed by the Collector, Mehsana dated 22.6.1982 and the original land bearing revenue survey No.1990 / 40 paiki was divided into two sub-plots, the petitioners

when submitted the plans and obtained development permissions in question, they have shown area of entire plot as if there is no sub-plotting admeasuring 3412.22 and 1086.48 sq.mtrs respectively and obtained development permission accordingly suppressing the above order and misleading the Area Development Authority concerned. It is submitted that if the correct position would have been shown, then, permission was required to be granted considering the area of the land in question for which the development permissions are obtained, would be less and permissible construction would also be less and therefore, it is submitted that the Deputy Secretary has rightly set aside the aforesaid two development permissions as well as the order passed by the Collector, Mehsana dated 7.7.2005 in dismissing the said appeals and rightly directed the Area Development Authority to hold inquiry with regard to the ownership and title of the lands in question and permissible area of construction and thereafter to sanction and / or grant development permission on submitting of fresh plans accordingly. Therefore, it

is submitted that the order passed by the Deputy Secretary, Urban Development and Urban Housing Department, State of Gujarat is not required to be interfered with by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India, more particularly, when the petitioners have not come out with clean hands.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. It appears from the record that the petitioners are the owners of the shops bearing City Survey Nos.1251 to 1258 and 1260 to 1269 and as they wanted to put up individual construction on demolishing the old construction, they have applied for development permission while submitting the lay out plans and it appears that they have shown measurement of land in question as 4500 sq.mtrs. with regard to the entire revenue Survey No.1990 / 40 paiki. It appears from the record and the order passed by the Deputy

Secretary that the Collector, Mehsana when granted development permission on 22.6.1982, and plans were sanctioned and according to the Deputy Secretary and the respondents, the original plot bearing Revenue Survey No.1990 / 40 paiki was sub-plotted into two sub plots i.e. sub-plot-A and sub-plot-B admeasuring 3412.22 and 1086.48 sq.mtrs respectively and accordingly, the plans were sanctioned and development permission was granted to put up construction upon the land admeasuring 815.69 sq.mtrs upon sub-plot-B and on 434.40 sq.mtrs upon the land of sub-plot No.A and the rest of the land i.e. bearing 2596.33 sq.mts of sub-plot-B and land admeasuring 652.08 sq.mtrs of sub-plot-A was required to be kept open. As stated above, while submitting the lay out plans while getting the development permission in question, the petitioners have shown 4500 sq.mts as if there was not sub-plotting and its only one single plot being Revenue Survey No.1990 / 40 paiki and considering the same and considering the fact that the petitioners suppressed the aforesaid fact and misled the Area Development Authority and

have obtained development permissions, the Deputy Secretary, Urban Development and Urban Housing Department partly allowed the said appeal and set aside the order passed by the Collector, Mehsana dated 7.7.2005 passed in Appeals Nos.1 & 2 of 2005 as well as the Development Permissions Nos.181 dated 15.9.2004 and No.357 dated 4.2.2005 respectively and consequently, the Deputy Secretary has also passed the order directing the petitioners to restore the position which was there prior to putting up the construction and considering the fact that the Area Development Authority has not considered the ownership and title of the land in question to the effect that whether the land bearing Revenue City Survey No.1990/40 paiki which was subsequently sub-plotted into two sub-plots by the Collector, Mehsana while granting and / or sanctioning the plans and lay out plans vide its order dated 22.6.1982 and granting development permission and thereafter to consider the permissible area for putting up construction and thereafter to sanction and / or grant development permission on submission of the fresh plans

accordingly. It is the contention that the petitioners that the theory with regard to sub-plotting was never before the Collector and therefore, the same could not have been considered by the Deputy Secretary while exercising the appellate jurisdiction and to that an extent the order passed by the Deputy Secretary is in breach of principle of natural justice. He has also further submitted that the Deputy Secretary has materially erred in directing the petitioners to remove the construction and restoring the position which was prevailing prior to construction. On goring through the order passed by the Collector, Mehsana, it appears that the theory with regard to sub-plotting pursuant to the orders passed by the Collector, Mehsana dated 22.6.1982 while sanctioning the lay out plans was not before the Collector, Mehsana and therefore, this Court is of the opinion that the matter requires to be remanded to the Collector, Mehsana directing the Collector, Mehsana to consider the aforesaid aspects and to take decision afresh after giving an opportunity to all the parties including the

petitioners as well as respondent Nos.4 to 6 herein and until then, the parties should be directed to maintain status quo as if in the mean time the construction is directed to be removed then the petitioners and the parties concerned will suffer irreparable loss and damage.

8. For the reasons stated above, all the petitions of this group succeed in part. The order passed by the Deputy Secretary, Urban Development and Urban Housing Department, State of Gujarat dated 17.9.2005 passed in Appeal No.9 of 2005 is hereby modified and the matter is remanded to the Collector, Mehsana and the Collector, Mehsana is directed to consider the theory of sub-plotting and to consider whether in fact there was any sub-plotting of the original land bearing Revenue Survey No.1990 / 40 paiki into two sub plots i.e sub-plot No.A and sub-plot-B as per the lay down plans while sanctioning the plans and granting the permissions vide order dated 22.6.1982, and whether the aforesaid two plots have become independent plots and if it is so, to consider

permissible are for construction and upon how much land the petitioners can put up construction of the shops in accordance with law with the provisions of GDCR Rules and Regulations under the Town Planning Act and if necessary, to direct the petitioners and the parties to submit revised plans accordingly after considering the above position with regard to title and the ownership of the lands in question and also permissible area of construction after giving opportunity to all the parties including petitioners as well as the respondent No.4 to 6 and considering the order dated 22.6.1982 passed by the Collector, Mehsana and the lay out plans sanctioned while granting permission dated 22.6.1982 and until then, the parties are directed to maintain status quo and the parties to abide by the directions that may be issued by the Collector, Mehsana on remand. It is, however, made clear that this Court has not expressed any opinion on merits of the case in favour of either party and the Collector, Mehsana is directed to consider the aforesaid aspects in accordance with law and on merits and even without in any way being

influenced by the observations made by the Deputy Secretary in its impugned judgment and order dated 17.9.2005 passed in Appeal No.9 of 2005.

9. Rule is made absolute to the aforesaid extent in each of the petition of this group with no order as to costs.

10. The Collector, Mehsana is also directed to take an appropriate decision as per the directions above as early as possible preferably within a period of four months from the date of receipt of this order.

Direct Service is permitted.

[M.R.Shah, J.]

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